

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-002-02-1-5-00040  
**Petitioners:** Christopher and Marilyn Kozinski  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 002-02-03-0064-0017  
**Assessment Year:** 2002

The Indiana Board of Tax Review (the "Board") issues this determination in the above matter, and finds and concludes as follows:

### Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held on December 23, 2003, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$181,000, and notified the Petitioners on March 19, 2004.
2. The Petitioners filed a Form 139L on April 28, 2004
3. The Board issued a notice of hearing to the parties dated February 21, 2005.
4. A hearing was held on March 23, 2005 in Crown Point, Indiana before Special Master Peter Salvesson.

### Facts

5. The subject property is located at: 5125 West 153<sup>rd</sup> Avenue, Crown Point, Cedar Creek Township, Lake County.
6. The subject property is a single-family home on 0.122 acres of land.
7. The Special Master did not conduct an on-site visit of the property
  - a) Assessed Value of subject property as determined by the DLGF:

Land \$83,800	Improvements \$ 97,200	Total \$181,000
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  - b) Assessed Value requested by Petitioner:

Land \$20,500	Improvements \$ 84,500	Total \$105,000
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8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
9. Persons sworn in at hearing:

For Petitioners: Christopher Kozinski, Owner  
Marilyn Kozinski, Owner

For Respondent: Terry Knee, Hearing Officer

### **Issues**

10. Summary of Petitioners' contentions in support of an alleged error in the assessment:
  - a) An appraisal for a home equity line of credit was done in 1999, and shows the value of the property to be \$105,000. *C. Kozinski testimony; Pet'r Ex. 3.* The appraisal is for the subject property and an adjacent, vacant parcel. *Id.*
  - b) Currently, prices in the subject's neighborhood are still lower than the subject property's assessment. *C. Kozinski testimony.*
  - c) The subject home is currently insured for \$141,000. *Id; Pet'r Ex. 9.* In 1999-2000, the home was insured for \$103,000. *Id.*
11. Summary of Respondent's contentions related to the assessment:
  - a) The neighborhood code is wrong on the current assessment. *Knee testimony.* This affects the base rate of land, and the improvement neighborhood factor. *Id.* Correction of the neighborhood code results in a total assessment of \$114,200. *Id; Resp't Ex. 7.*
  - b) The appraisal submitted by the Petitioners has numerous large adjustments to comparables. *Knee argument.* There are errors in the adjustments to the third comparable. *Id.* Thus, the second comparable (\$123,930) is actually the most appropriate. *Id.*

### **Record**

12. The official record for this matter is made up of the following:
  - a) The Petition and all subsequent submissions by either party.
  - b) The tape recording of the hearing labeled Lake Co - 1369.
  - c) Exhibits:

Petitioners Exhibit 1:	Summary of Petitioner's Arguments
Petitioners Exhibit 2:	Informal Hearing Documents

Petitioners Exhibit 3:	Subject Property Appraisal
Petitioners Exhibit 4:	Form 139L Petition
Petitioners Exhibit 5:	Notice of Defect & Notice of Hearing on Petition
Petitioners Exhibit 6:	Ravinia Woods Map
Petitioners Exhibit 7:	Tax Records Comparisons of Appraisal Properties
Petitioners Exhibit 8:	Property Tax Bill History
Petitioners Exhibit 9:	Home Insurance Policies

Respondent Exhibit 1:	Form 139L Petition
Respondent Exhibit 2:	Subject Property Record Card
Respondent Exhibit 3:	Subject Property Photograph
Respondent Exhibit 4:	Plat Map
Respondent Exhibit 5:	Comparable Sales Sheet
Respondent Exhibit 6:	Cedar Creek Sales List
Respondent Exhibit 7:	Corrected Property Record Card

Board Exhibit A:	Form 139 L Petition
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Sign-In Sheet

d) These Findings and Conclusions.

### Analysis

13. The most applicable laws are:

- a) A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d at 475, 478 (Ind. Tax Ct. 2003); see also, *Clark v. State Bd. Of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
- b) In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E. 2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board....through every element of the analysis”).
- c) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

14. The Petitioners did not provide sufficient evidence to support the Petitioners’ contentions. The Respondent, however, submitted evidence that the assessment is incorrect. This conclusion was arrived at because:

- a) The Petitioners contend that the assessment of the subject property is too high.
- b) The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4.
- c) In support of their position, the Petitioners submitted an appraisal of the property, which was completed in 1999. The appraisal values the subject property, together with a vacant adjacent parcel, at \$105,000.
- d) The Respondent, however, adequately rebutted the validity of this appraisal by arguing that numerous adjustments were made to the comparable properties, which calls into question whether they are truly comparable. Also, the Respondent noted that the third comparable used on the appraisal improperly adjusted the lot size by making a negative adjustment instead a positive adjustment. This error improperly affects the entire appraisal.
- e) The Respondent, though, agrees that the current assessment is incorrect. The Respondent’s evidence includes a listing of comparable properties, and a property record card which places the subject in the correct neighborhood, thereby lowering the assessment to \$114,200.
- f) As a result of this evidence, the Board hereby determines that the assessment of the subject property should be changed to \$114,200.

### **Conclusions**

- 15. The Petitioners did not make a prima facie case. The Respondent, however, provided evidence that the assessment should be changed to \$114,200.

## Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to \$114,200.

ISSUED: \_\_\_\_\_

\_\_\_\_\_  
Commissioner,  
Indiana Board of Tax Review

## IMPORTANT NOTICE

### - APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code § 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trail Rules are available on the Internet at [http://www.in.gov/judiciary/rules/trial\\_proc/index.html](http://www.in.gov/judiciary/rules/trial_proc/index.html). The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.